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IN THE

# Supreme Court of the United States

October Term, 1969

No. 231

(Formerly October Term 1968 No. 1517)

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INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1416, AFL-CIO,

*Petitioner,*

v.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,

*Respondents.*

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## PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

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This reply is addressed to the only real contention made in respondents' brief in opposition to certiorari: that there were no longshore operations involved in this case and therefore petitioner's picketing could not have been directed at the use of non-members of a longshore union to perform longshore work at rates below the established area standards.

1. Respondents' contention is totally unsupported by the record. Indeed, the only "citation" is to testimony in another case, before another judge, involving another company and other issues. This can hardly support the injunction issued herein on the present record. It likewise furnishes no support to the unfounded assertion in respondents'

brief (pp. 4-5) that the "true facts" were pointed out by the record herein to the Florida courts.

2. The only witness to testify in this case at any stage, from temporary restraining order to permanent injunction, testified flatly that the "type of work" which the pickets were protesting was "Loading of the ship, stowage and loading of automobiles, loading cargo and ship stowage." He further testified that such work was in fact performed both by "employees of the ship" and "by outside labor." (42a) Neither through cross-examination nor other means did respondents' counsel seek to challenge this testimony.

Indeed, on cross-examination the witness testified that the substandard wage picketing did not take place on one particular day as to which he was questioned because no loading was then being performed. However, he testified, in the previous week there was such picketing because loading did take place at that time (42a).

3. The burden of proof in this action for an injunction is plaintiffs', not defendant's. If plaintiffs wished to contend that there was no bona fide labor dispute because no longshore operations were being performed, then they carried the burden to make the necessary factual showing. Absolutely no such evidence was introduced, no concession was sought from or made by defendant, no contention to this effect appears anywhere in the record, and the Florida courts' reliance on the decisions in *Incres SS. Co.* v. *IMWU,* 312 U. S. 24 and *McCulloch* v. *Sociedad de Marineros de Honduras,* 372 U. S. 10, shows that this was not the basis of the decisions below.

4. In any event, the loading of ships' stores and supplies from the dock to the vessel and the loading and unloading of passengers' baggage is traditional longshore work per-

formed on all passenger vessels. This work, as indicated in our petition for certiorari, falls within the preemptive jurisdiction of the NLRB and is not, and should not be, covered by the decisions in *Incres* and *Sociedad Nacional de Marineros de Honduras.**

5. Assuming that a factual issue were tendered as to plaintiffs' performance of longshore work—which, on this record, is not the case—such an issue would be for the NLRB to determine, not a state court. To permit NLRB jurisdiction to be totally bypassed and state injunctions to issue through the device of allowing the state court to determine the underlying factual issues is to permit the erosion of Board authority and the truncation of its potential jurisdiction. It is just such a result which the preemption doctrine is designed to prevent; and it is for this reason that such underlying issues as the existence of a labor dispute, the status of personnel as supervisory or non-supervisory, and similar threshold factual questions, must first be decided by the Board.

6. Respondents' preoccupation with the "safety" signs is obfuscatory of the issues herein. As early as the initial hearing on the temporary restraining order, the union made clear that its prime concern was to vindicate and defend its right to picket against the performance of longshore work by non-union members at substandard wages (40a-43a). The trial court nevertheless enjoined such picketing in paragraph 3 of the restraining order (18a), which

* It is likely that the term "ship's stowage" appearing twice in the transcript of Mr. Turner's testimony (42a), was intended to be "ships stores" in the actual testimony of the witness and was erroneously transcribed. However viewed, the testimony of this witness does establish the performance of longshore work on respondents' vessels, particularly in the absence of conflicting evidence.

was later extended into a permanent injunction (16a). In all state appellate proceedings, petitioner's primary attack was upon this decretal provision.

7. Whether respondents operate one vessel or one hundred, the principle underlying the Florida decisions represents a frontal attack upon the jurisdiction of the NLRB over a major segment of longshore work and would totally disrupt labor relations in this vital industry. The decision below also deprives longshore workers of basic rights to free speech in circumstances under which such rights have been upheld by the decisions of this Court.

## CONCLUSION

For all the foregoing reasons, and for those set forth in our petition for certiorari, we respectfully urge that the petition be granted.

Respectfully submitted,

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